THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.12018 of 2007

Date : 5-9-2007

Between :

K.Gopal Rao s/o.Chinna Narasanna
Aged 38 years, Purushottampalli village,
Nidadavole Mandal,
West Godavari District. ..
Petitioner

And

The Regional Joint Commissioner (Endowments),
Kakinada
and two others ..
Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.12018 of 2007

ORDER:

1. This Court ordered Notice before admission on 12-6-2007 and while directing the Writ Petition to appear in the list on 26-6-2007, further made the following order :

> "Pending further orders the auction proposed to be held under the impugned auction notice may go on, but the same shall not be confirmed".

2. The Writ Petition is filed praying for a Writ of Mandamus, or any other appropriate writ, order or direction, declaring the action of the 3rd respondent in conducting public auction in respect of dry land measuring Acs.4-04 cents in Sy.No.276, situate in Vijjeswaram village, Nidadavole Mandal, West Godavari District, belonging to the 3rd respondent pending Appeal before

the 1st respondent in A.S.No.140/2007 as illegal, null and void and violative of principles of natural justice and for a consequential order directing the respondents to drop all further proceedings against the land measuring Acs.4-04 cents in Sy.No.276 of Vijjeswaram village, Nidadavole Mandal, West Godavari District and to pass such other suitable orders.

3. It is stated in para-2 of the affidavit filed in support of the Writ Petition by the writ petitioner that he is a cultivating tenant of the 3rd respondent temple in respect of the dry land in Sy.No.276 admeasuring Acs.4-04 cents in Vijjeswaram village, West Godavari District. It is also further stated that he is cultivating the said land for the last four decades and the said land was taken on lease by his father and after his father's demise, the petitioner came into possession of the land being his son and legal heir and ever since he had been cultivating the land as tenant by paying maktha to the 3rd respondent-temple @ 37 bags for first crop and 36 bags for second crop. It is further stated that the land in question is a dry land and he had been paying the rentals regularly without any default or delay as fixed by the respondent from time to time. It is also further stated in para-3 of the affidavit that the petitioner is a small farmer owning an extent of Ac.0-61

cents of dry land situate in R.S.No.24/3B and 89/5C in Vijjeswaram besides the land under cultivation of the 3rd respondent and as such the petitioner is in cultivation to an extent of Acs.4-65 cents of dry land which is less than Acs.5-00 of dry land to determine a person as a small farmer and hence the petitioner is a small farmer as defined by the Act and so he is entitled to be treated as a small farmer. The certificate issued by the Mandal Revenue Officer in this regard also had been filed. It is also further stated in para-4 of the affidavit that while so, the 3rd respondent issued a notice dated 1-4-2005 under Form I under Rule 5(1) of A.P. Charitable Hindu Religions Institutions and Endowments Act, Act 30 of 1987, under G.O.Ms.No.379, dated 11-3-2003. On receipt of the said notice, the petitioner filed objections stating that he is a small farmer as defined under the Act since he owns less than Acs.5-00 of land and to declare him as a small farmer. An enquiry is conducted by the 2nd respondent under Rule 3(1) under the Rules. The 2nd respondent without considering whether the petitioner is a small farmer or not, dismissed the claim erroneously holding that the petitioner cannot be treated as a tenant since he did not come into possession of the land prior to six years of the commencement of the Act 30 of 1987.

The 3rd respondent having issued notice under Rule 5(1) of the Rules, the 2nd respondent should have conducted an enquiry as contemplated under the Act to determine whether the petitioner is a small farmer or not. The 2nd respondent without conducting an enquiry as contemplated under the Act dismissed the application of the petitioner on different ground which is not sustainable. The order issued in proceedings in Rc.No.A4/4715/2005, dated 6-7-2006 had been served on the petitioner on 21-5-2007. It is also further stated that being aggrieved of the said order, the petitioner preferred an Appeal before the 1st respondent under Rule 4 of the Rules on 8-5-2007 and the same is numbered as A.S.No.140/2007 along with the stay application. It is also further stated in para-5 of the affidavit that while the matters stood thus, the 3rd respondent made a publication dated 28-5-2007 stating that he is going to hold the auction on 13-6-2007 at about 10 A.M. for leasing out the land for a period of three years commencing from 2007-08 to 2009-10 and the same was published in the petitioner's village on 9-6-2007. Thereupon the petitioner came to know that the lands are being put for public auction on 13-6-2007 and immediately went to the office of the 3rd respondent and requested him not to proceed with the impugned action of auction as the

petitioner preferred an Appeal against the order of the 2nd respondent before the 1st respondent. The 3rd respondent is bent upon to proceed with the impugned auction as published even without waiting for the 30 days Appeal time as contemplated under Rule 4 of the Rules. It is also further stated that the petitioner raised paddy crop in the schedule land with a great expense with a fond hope that he will be allowed to continue as a tenant since the petitioner is a small farmer as defined under the Act. The proposed action of the 3rd respondent is ex-facie illegal, contrary to law and violative of principles of natural justice and if the auction is allowed to be continued, the petitioner will be put to irreparable loss and his Appeal will become infructuous and even if he succeeds in the Appeal by the time the order is passed, third parties interest will set in. It is also further stated that the petitioner raised the crop spending huge amount and the 3rd respondent cannot dispossess the petitioner under the guise of public auction pending Appeal. If the petitioner is dispossessed from his land without considering his Appeal, he will be put to irreparable loss and injury. Certain other further facts also had been narrated in paras 6 and 7 of the affidavit filed in support of the Writ Petition.

4. The 3rd respondent filed counter. In para-2 of the counter affidavit filed, it is stated that the temple is Section 6(C) temple under A.P. Charitable Hindu Religious Institutions and Endowments Act 1987. It is also further stated in para-3 of the counter affidavit that the 3rd respondent-temple is the owner of an extent of Acs.4-04 cents of land in S.No.276 in Vijjeswaram village and it is not correct to state that the writ petitioner is cultivating the land since more than the last four decades. It is also further stated that there is no lease deed or approval of lease from the competent authority in favour of the writ petitioner within the relevant period which is mandatory i.e., within six years before commencement of the Act 30 of 1987 as per Section 82(2) of the said Act. As per the reported decision in **Dega Babi Reddy and others Vs. Government of Andhra Pradesh** [1] possession of a person in the lands of Charitable, Religious and Endowments Institution will not give any tenancy rights even though they are in possession for decades without lease deed and recognition from the competent authority. The provisions of A.P. Tenancy Act are not applicable to the lands of Charitable, Religious and Endowments and as such there is no heritance of tenancy. In the case of the writ petitioner, he himself pleaded that his father was

the tenant and after his death he is continuing in the land and so the petitioner is not the tenant under the 3rd respondent. It is absolutely false to state that the petitioner is paying rents regularly without committing default etc. The petitioner is a chronic defaulter in payment of damages for use and occupation from 2005-06 to 2006-07, total 131 kata bags, and in fact by the date of disposal of the petition filed by the petitioner before the Assistant Commissioner, Eluru in Procs. in R.C.No.A4/4715/2005, dated 6-7-2006, the petitioner was in arrears of 79 kata bags for the years 2004-05 and 2005-06 coming to Rs.60,000/- and hence even after disposal of the petition the petitioner had been continuously committing default. As per the provisions of the Act 30 of 1987 and the Rules framed under G.O.Ms.No.279 of 2003, the writ petitioner is not entitled to the benefits. After considering all the aspects the Assistant Commissioner rejected the petition of the writ petitioner. It is further stated that the writ petitioner himself accepted that he owns another Ac.0-61 cents of land. As there is no lease deed and as the writ petitioner is a chronic defaulter and as the writ petitioner owns immovable properties, he is not entitled to the benefits of declaration as a landless poor. It is not correct to state

that the 2nd respondent-Assistant Commissioner without conducting enquiry passed erroneous orders. It is true that the petitioner filed Appeal 140 of 2007 before the Regional Joint Commissioner, Multi Zone-I, Kakinada and in the said Appeal there are no prohibitory orders like stay etc., for conducting of auction of the lease hold rights. Further, it is stated in para-4 of the counter affidavit that it is true that a publication was made for the proposed auction of lease hold rights of the land on 13-6-2007 and accordingly on 13-6-2007 the 3rd respondent conducted auction as per the directions given by this Court but since the present Writ Petition is pending the participants of the bid who are 24 in number had not even made initial deposit and as such the auction could not be proceeded. The writ petitioner made wrong publicity as if the respondent has no right to conduct auction to the public who were present suppressing and misguiding the directions of this Court in the present Writ Petition. The writ petitioner has no right to stall the auction of lease hold rights and to protract the litigation without having any case, the writ petitioner filed the present Writ Petition. It is also stated that it is not correct to state that the writ petitioner raised crop in the land. The agricultural season for the first crop of 2007-08 had just commenced and the

writ petitioner had not even commenced the agricultural operations and the land is vacant. For that reason only several persons intended to participate in the auction. The writ petitioner has no right to file the present Writ Petition and the writ petitioner is not entitled to take simultaneous proceedings i.e., filing Appeal before the Regional Joint Commissioner and filing the present Writ Petition.

5. As can be seen from the respective stands taken by the parties, it is clear that already the writ petitioner had availed the remedy of Appeal and the same is pending before the Regional Joint Commissioner. For reasons best known, the writ petitioner is pursuing both the remedies. It is stated that inasmuch as the 3rd respondent is further proceeding with the auction pending Appeal, this Writ Petition had been thought of. Whatever the reasons may be, when a statutory Appeal is pending, it would be always just and proper on the part of the writ petitioner to pursue the said remedy. Hence, it is made clear that the Regional Joint Commissioner to expedite the hearing of the Appeal said to be pending on his file

and pass appropriate orders at an early date.

6. With the above observations, the Writ Petition is disposed of. However, this will not come in the way of the 3rd respondent in further proceeding the impugned auction which had been challenged, but however, it may be subject to the further orders, if any to be made by the Appellate Authority. No costs.

Justice P.S.Narayana

Date : 5-9-2007

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[1] **2006(6) ALT 173**